

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SECURITIES AND EXCHANGE COMMISSION,	:	
	:	
Plaintiff,	:	17cv1789 (DLC)
	:	
-v-	:	<u>ORDER</u>
	:	
LEK SECURITIES CORPORATION, SAMUEL	:	
LEK, VALI MANAGEMENT PARTNERS dba	:	
AVALON FA LTD, NATHAN FAYYER, and	:	
SERGEY PUSTELNIK,	:	
	:	
Defendants.	:	
	:	
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DENISE COTE, District Judge:

Following a jury verdict in favor of plaintiff Securities and Exchange Commission ("SEC"), defendants Vail Management Partners dba Avalon FA Ltd ("Avalon"), Nathan Fayyer ("Fayyer"), and Sergey Pustelnik ("Pustelnik") (collectively, the "Defendants") were ordered on March 20, 2020 to jointly and severally disgorge \$4,495,564, plus prejudgment interest in the sum of \$131,750 (the "March 20, 2020 Opinion"). Each Defendant was also assessed a civil penalty in the amount of \$5 million and permanently enjoined from violating Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act. The March 20, 2020 Opinion further stated that "[i]n the event that no order of disgorgement may be

enforced, the civil penalty assessed against each Defendant shall be increased to \$7.5 million.”

The Defendants appealed to the United States Court of Appeals for the Second Circuit. During the pendency of their appeal, the United States Supreme Court decided Liu v. Securities and Exchange Commission, 140 S. Ct. 1936 (2020), which imposed certain limitations on district courts’ ability to order disgorgement in SEC enforcement actions. On November 20, 2020, the Second Circuit remanded the case to allow this Court to consider “whether its judgment in this case is consistent” with the Supreme Court’s decision in Liu. SEC v. Vali Management Partners, DBA Avalon FA LTD, et al., No. 20-1854 (2d Cir. Nov. 20, 2020). Following the Second Circuit’s remand, the parties were ordered to file memoranda addressing the impact of Liu on the judgment described in the March 20, 2020 Opinion. The briefing became fully submitted on January 29, 2021.

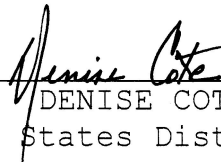
The SEC concedes that the disgorgement remedy described in the March 20, 2020 Opinion is no longer enforceable following Liu, and requests that the \$7.5 million civil penalty described in the March 20, 2020 Opinion be imposed against each Defendant as an alternative to the now-unenforceable disgorgement order. Defendants object to this proposed remedy, but their objections have either been considered and rejected in the March 20, 2020

Opinion or are otherwise unpersuasive. Accordingly, it is hereby

ORDERED that Avalon, Fayer, and Pustelnik shall each pay a civil penalty of \$7.5 million.

IT IS FURTHER ORDERED that each defendant be permanently enjoined from violating Sections 9(a)(2) and 10(b) of the Exchange Act, Rule 10b-5 thereunder, and Section 17(a) of the Securities Act.

Dated: New York, New York
February 9, 2021



DENISE COTE
United States District Judge